

1 KAMALA D. HARRIS
Attorney General of California
2 GLORIA A. BARRIOS
Supervising Deputy Attorney General
3 ARMANDO ZAMBRANO
Deputy Attorney General
4 State Bar No. 225325
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-2542
6 Facsimile: (213) 897-2804
Attorneys for Complainant

8 **BEFORE THE**
9 **BOARD OF REGISTERED NURSING**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 2013-309

13 **KENNETH TOD MCFARLAND**

ACCUSATION

14 6561 Flagstone Place
Rancho Cucamonga, CA 91739

15 **Registered Nurse License No. 375735**
16 **Nurse Practitioner Certificate No. 15326**
17 **Nurse Practitioner Furnishing**
18 **Certificate No. 15326**

Respondent.

19 Complainant alleges:

20 **PARTIES**

21 1. Louise R. Bailey, M.Ed., RN ("Complainant") brings this Accusation solely in her
22 official capacity as the Executive Officer of the Board of Registered Nursing, Department of
23 Consumer Affairs.

24 **Registered Nurse License**

25 2. On or about August 31, 1984, the Board of Registered Nursing, Department of
26 Consumer Affairs, issued Registered Nurse License No. 375735 to Kenneth Tod McFarland
27 ("Respondent"). The Registered Nurse License was in full force and effect at all times relevant to
28 the charges brought herein and will expire on September 30, 2012, unless renewed.

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1 8. Section 2764 of the Code provides:

2 "The lapsing or suspension of a license by operation of law or by order or decision
3 of the board or a court of law, or the voluntary surrender of a license by a licensee
4 shall not deprive the board of jurisdiction to proceed with any investigation of or
action or disciplinary proceeding against such license, or to render a decision
suspending or revoking such license."

5 **STATUTORY PROVISIONS**

6 9. Section 2761 of the Code provides, in pertinent part:

7 "The board may take disciplinary action against a certified or licensed nurse or
8 deny an application for a certificate or license for any of the following:

" (a) Unprofessional conduct, which includes, but is not limited to, the following:

9 ...
10 (d) Violating or attempting to violate, directly or indirectly, or assisting in or
abetting the violating of, or conspiring to violate any provision or term of this
chapter or regulations adopted pursuant to it."

11 10. Section 2762 of the Code provides:

12 "In addition to other acts constituting unprofessional conduct within the meaning of
13 this chapter it is unprofessional conduct for a person licensed under this chapter to
do any of the following:

14 (a) Obtain or possess in violation of law, or prescribe, or except as directed by a
licensed physician and surgeon, dentist, or podiatrist administer to himself or
herself, or furnish or administer to another, any controlled substance as defined in
15 Division 10 (commencing with Section 11000) of the Health and Safety Code or
any dangerous drug or dangerous device as defined in Section 4022.

16 (b) Use any controlled substance as defined in Division 10 (commencing with
Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous
17 device as defined in Section 4022, or alcoholic beverages, to an extent or in a
manner dangerous or injurious to himself or herself, any other person, or the public
18 or to the extent that such use impairs his or her ability to conduct with safety to the
public the practice authorized by his or her license.

19 (c) Be convicted of a criminal offense involving the prescription, consumption, or
self-administration of any of the substances described in subdivisions (a) and (b) of
20 this section, or the possession of, or falsification of a record pertaining to, the
substances described in subdivision (a) of this section, in which event the record of
21 the conviction is conclusive evidence thereof.

22 (d) Be committed or confined by a court of competent jurisdiction for intemperate
use of or addiction to the use of any of the substances described in subdivisions (a)
23 and (b) of this section, in which event the court order of commitment or
confinement is prima facie evidence of such commitment or confinement.

24 (e) Falsify, or make grossly incorrect, grossly inconsistent, or unintelligible
entries in any hospital, patient, or other record pertaining to the substances
25 described in subdivision (a) of this section."

26 11. Code section 2770.7 provides, in pertinent part:

27 "(a) The board shall establish criteria for the acceptance, denial, or termination of
registered nurses in the diversion program. Only those registered nurses who have
28 voluntarily requested to participate in the diversion program shall participate in the
program."

1 "(d) Neither acceptance nor participation in the diversion program shall preclude
2 the board from investigating or continuing to investigate, or taking disciplinary
3 action or continuing to take disciplinary action against, any registered nurse for any
unprofessional conduct committed before, during, or after participation in the
diversion program.

4 (e) All registered nurses shall sign an agreement of understanding that the
5 withdrawal or termination from the diversion program at a time when the program
6 manager or diversion evaluation committee determines the licensee presents a
7 threat to the public's health and safety shall result in the utilization by the board of
8 diversion treatment records in disciplinary or criminal proceedings.

9 (f) Any registered nurse terminated from the diversion program for failure to
10 comply with program requirements is subject to disciplinary action by the board for
11 acts committed before, during, and after participation in the diversion program. A
12 registered nurse who has been under investigation by the board and has been
13 terminated from the diversion program by a diversion evaluation committee shall
14 be reported by the diversion evaluation committee to the board."

15 12. Code section 2770.11 provides:

16 "(a) Each registered nurse who requests participation in a diversion program shall
17 agree to cooperate with the rehabilitation program designed by the committee and
18 approved by the program manager. Any failure to comply with the provisions of a
19 rehabilitation program may result in termination of the registered nurse's
20 participation in a program. The name and license number of a registered nurse who
21 is terminated for any reason, other than successful completion, shall be reported to
22 the board's enforcement program.

23 (b) If the program manager determines that a registered nurse, who is denied
24 admission into the program or terminated from the program, presents a threat to the
25 public or his or her own health and safety, the program manager shall report the
26 name and license number, along with a copy of all diversion records for that
27 registered nurse, to the board's enforcement program. The board may use any of the
28 records it receives under this subdivision in any disciplinary proceeding."

13. Code section 4022 provides:

"Dangerous drug" or "dangerous device" means any drug or device unsafe for self-
use in humans or animals, and includes the following:

(a) Any drug that bears the legend: "Caution: federal law prohibits dispensing
without prescription," "Rx only," or words of similar import.

(b) Any device that bears the statement: "Caution: federal law restricts this device
to sale by or on the order of a _____," "Rx only," or words of similar import, the
blank to be filled in with the designation of the practitioner licensed to use or order
use of the device.

(c) Any other drug or device that by federal or state law can be lawfully dispensed
only on prescription or furnished pursuant to Section 4006.

14. Code section 4060 provides:

"No person shall possess any controlled substance, except that furnished to a person
upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or
naturopathic doctor pursuant to Section 3640.7, or furnished pursuant to a drug
order issued by a certified nurse-midwife pursuant to Section 2746.51, a nurse
practitioner pursuant to Section 2836.1, a physician assistant pursuant to Section

1 3502.1, a naturopathic doctor pursuant to Section 3640.5, or a pharmacist pursuant
2 to either Section 4052.1 or 4052.2. This section shall not apply to the possession of
3 any controlled substance by a manufacturer, wholesaler, pharmacy, pharmacist,
4 physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor,
5 certified nurse-midwife, nurse practitioner, or physician assistant, when in stock in
6 containers correctly labeled with the name and address of the supplier or producer.

7 Nothing in this section authorizes a certified nurse-midwife, a nurse practitioner,
8 a physician assistant, or a naturopathic doctor, to order his or her own stock of
9 dangerous drugs and devices."

10 15. Code section 822 provides:

11 "If a licensing agency determines that its licentiate's ability to practice his or her
12 profession safely is impaired because the licentiate is mentally ill, or physically ill
13 affecting competency, the licensing agency may take action by any one of the
14 following methods:

15 (a) Revoking the licentiate's certificate or license.

16 (b) Suspending the licentiate's right to practice.

17 (c) Placing the licentiate on probation.

18 (d) Taking such other action in relation to the licentiate as the licensing agency in
19 its discretion deems proper.

20 The licensing agency shall not reinstate a revoked or suspended certificate or
21 license until it has received competent evidence of the absence or control of the
22 condition which caused its action and until it is satisfied that with due regard for the
23 public health and safety the person's right to practice his or her profession may be
24 safely reinstated."

25 16. Health and Safety Code section 11170 provides:

26 "No person shall prescribe, administer, or furnish a controlled substance for himself."

27 17. Health and Safety Code section 11173 provides:

28 "(a) No person shall obtain or attempt to obtain controlled substances, or procure or
attempt to procure the administration of or prescription for controlled substances,
(1) by fraud, deceit, misrepresentation, or subterfuge; or (2) by the concealment of
a material fact.

(b) No person shall make a false statement in any prescription, order, report, or
record, required by this division.

(c) No person shall, for the purpose of obtaining controlled substances, falsely
assume the title of, or represent himself to be, a manufacturer, wholesaler,
pharmacist, physician, dentist, veterinarian, registered nurse, physician's assistant,
or other authorized person.

(d) No person shall affix any false or forged label to a package or receptacle
containing controlled substances."

18. Health and Safety Code section 11174 provides:

"No person shall, in connection with the prescribing, furnishing, administering, or
dispensing of a controlled substance, give a false name or false address."

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CONTROLLED SUBSTANCES AND DANGEROUS DRUGS

19. Norco is the brand name for a narcotic that contains Hydrocodone bitartrate and Acetaminophen. Hydrocodone is in a group of drugs called opioid pain relievers. Acetaminophen is a less potent pain reliever that increases the effects of hydrocodone. Norco is generally prescribed to treat moderate to severe pain. It is designated as a Schedule III controlled substance per Health and Safety Code section 11056(e)(4). It is usually found in tablet form and marketed under the trade names Vicodin, and Lortab.

20. Darvocet contains a combination of Propoxyphene and Acetaminophen. Propoxyphene is a narcotic pain reliever. Darvocet is generally prescribed to treat mild to moderate pain and is designated as a Schedule IV controlled substance per Health & Safety Code Section 11057(c)(2). In November 2010, the US Food and Drug Administration (FDA) withdrew all medications containing Propoxyphene due to concerns about dangerous cardiac side effects.

21. Fentanyl is a powerful synthetic opiate analgesic similar to but approximately 100 times more potent than morphine. It is typically used to treat patients with severe pain, or to manage pain after surgery. It is also sometimes used to treat people with chronic pain who are physically tolerant to opiates. It is designated as a Schedule II controlled substance per Health & Safety Code Section 11055(c)(8).

22. Dilaudid is the brand name for the narcotic Hydromorphone Hydrochloride. It is an opioid pain relievers and generally prescribed to treat moderate to severe pain. It is designated as a Schedule II controlled substance per Health and Safety Code section 11055(b)(1)(J).

23. Percocet is the brand name for the narcotic that contains Oxycodone and Acetaminophen. Oxycodone is in a group of drugs called opioid pain relievers. Acetaminophen is a less potent pain reliever that increases the effects of Oxycodone. Percocet is generally prescribed to treat moderate to severe pain. It is designated as a Schedule II controlled substance per Health and Safety Code section 11055(b)(1)(M).

24. Ultram is the brand name for the pain reliever Tramadol. It is a centrally-acting synthetic analgesic used to treat moderate to severe pain. It is designated as a dangerous drug per Health and Safety Code section 4022 and can be lawfully dispensed only by a prescription.

1 **COST RECOVERY**

2 25. Business and Professions Code Section 125.3 provides, in pertinent part, that the
3 Board may request the administrative law judge to direct a licensee found to have committed a
4 violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the
5 investigation and enforcement of the case.

6 **PUBLIC SAFETY RISK:**
7 **RESPONDENT'S TERMINATION FROM**
8 **DRUG DIVERSION PROGRAM**

9 26. On January 12, 2012, the Respondent voluntarily requested to participate in the Board
10 of Registered Nursing's Diversion Program in order to obtain assistance with his chemical
11 dependency. At the time, the Respondent was working as a Nurse Practitioner at Desert Valley
12 Hospital, in Victorville, CA. He admitted taking forty (40) Norco pills per day and writing false
12 and fraudulent prescriptions for personal use.

13 27. On January 19, 2012, the Respondent voluntarily entered a 60-day inpatient program.

14 28. On March 28, 2012, the Respondent underwent surgery to his left index finger after
15 reportedly suffering an accident while using a utility knife. The Respondent received Fentanyl
16 and Dilaudid in the hospital and a prescription for Ultram.

17 29. On March 29, 2012, the Respondent was admitted into the Board's Diversion
18 Program administered by Maximus. The Respondent agreed to comply with all the recovery
19 terms and conditions including complete sobriety, abstaining from mind-altering substances,
20 suspension from nursing practice, successful completion of a 12-step program with 90-day
21 inpatient treatment, random drug testing, and regular reporting.

22 30. On April 5, 2012, the Respondent underwent emergency surgery to his lower left leg
23 after reportedly suffering a chainsaw accident while cutting wood. The Respondent received
24 Percocet in the hospital and a prescription for Ultram.

25 31. On May 18, 2012, the Respondent provided a urine sample, which tested positive for
26 the controlled substance Propoxyphene (Darvocet) and Norpropoxyphene. The Respondent later
27 admitted taking two Darvocet pills to help him sleep.

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1 32. On May 29, 2012, the Respondent was placed in a 72-hour involuntary psychiatric
2 hold and underwent emergency surgery after attempting to amputate his left arm with a miter saw
3 and severely damaging tendons. He reportedly felt depressed and cut his arm to the bone. He
4 admitted this was not the first time that he tried to hurt himself and that he had previously tried to
5 amputate his leg with a chainsaw. He was housed in a psychiatric unit for 14 days of treatment.

6 33. On June 22, 2012, the Respondent was terminated unsuccessfully from the Diversion
7 Program for public safety risk and failing to comply with program requirements.

8 **FIRST CAUSE FOR DISCIPLINE**

9 **(Use of Controlled Substances - Dangerous or Injurious to Himself or Public)**

10 34. Respondent is subject to disciplinary action under Code sections 2761(a) and 2762(b),
11 in that while employed as a registered nurse, he used controlled substances or dangerous drugs to
12 an extent or in a manner dangerous or injurious to himself or any other person, or the public or to
13 the extent that such use impairs his ability to conduct with safety to the public the practice
14 authorized by his license. Complainant refers to and by this reference incorporates the allegations
15 set forth above in paragraphs 27 through 33, inclusive, as though fully set forth herein.

16 **SECOND CAUSE FOR DISCIPLINE**

17 **(Attempted to Obtain Controlled Substances by Fraud, Deceit, or Misrepresentation)**

18 35. Respondent is subject to disciplinary action under Code sections 2761(a) and 2762(e),
19 in accordance with Code section 4060 and Health and Safety Code sections 11173 and 11170, in
20 that while employed as a registered nurse, obtained or attempted to obtain controlled substances,
21 or procured or attempted to procure the administration of or prescription for controlled
22 substances, by fraud, deceit, misrepresentation, or subterfuge; or by the concealment of a material
23 fact. The facts and circumstances are:

24 a. On or about December 24, 2011, the Respondent obtained or attempted to obtain a
25 controlled substance by using a fraudulent prescription from Desert Valley Hospital. The
26 prescription indicated the Respondent's name as the patient, and ordered 100 pills of Norco
27 10/325.

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b. On or about November 26, 2011, the Respondent obtained or attempted to obtain a controlled substance by using a fraudulent prescription from Desert Valley Hospital. The prescription indicated the Respondent's name as the patient, and ordered 100 pills of Norco 10/325.

c. Both prescriptions were purportedly signed by an emergency room physician, who was subsequently interviewed, and emphatically denied signing the prescription or ordering a prescription for the Respondent. The Respondent later admitted to writing the false and fraudulent prescriptions for personal use.

THIRD CAUSE FOR DISCIPLINE

(Attempted to Obtain or Possess in Violation of Law - Controlled Substances)

36. Respondent is subject to disciplinary action under Code sections 2761(a) and 2761(d), in accordance with 2762(a), in that while employed as a registered nurse, he attempted to obtain or obtaining or possessed in violation of law, or prescribed, or except as directed by a licensed physician and surgeon, administered to himself, any controlled substance or dangerous drug. Complainant refers to and by this reference incorporates the allegations set forth above in paragraph 35, as though fully set forth.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Registered Nursing, Department of Consumer Affairs issue a decision:

1. Revoking or suspending Registered Nurse License Number 375735, issued to Kenneth Tod McFarland;

2. Revoking or suspending Nurse Practitioner Certification No. 15326, issued to Kenneth Tod McFarland;

3. Revoking or suspending Nurse Practitioner Furnishing Certification No. 15326,
issued to Kenneth Tod McFarland;


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1 4. Ordering Kenneth Tod McFarland to pay the Board of Registered Nursing the
2 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
3 Professions Code section 125.3;

4 5. Taking such other and further action as deemed necessary and proper.

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6 DATED: October 24, 2012


for LOUISE R. BAILEY, M.ED., RN
Executive Officer
Board of Registered Nursing
State of California
Complainant

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